Sprint

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DOCKET FILE COPY ORIGINAL

ERRATUM

March 19, 1998

97-250

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: In the Matter of MCI Telecommunications Corporation Petition for Prescription of Tariffs Implementing Access Charge Reform, CCB/CPD 98-12

Dear Ms. Salas:

Sprint Corporation filed Comments yesterday in above referenced matter. The pleading was inadvertently filed without the attachment and failed to reference the FCC's internal file number. In order to assure that a true and correct copy is on file we are filing an erratum pleading with the attachment included. A complete copy of the Comments, including the attachment, is being served on all parties on the service list.

If you have any questions, please feel free to call at (202) 828-7449.

Respectfully,

Melinda L. Mills

Attachment

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	CC Docket No. 97-250
Petition for Prescription of Tariffs	)	DA 98-385
Implementing Access Charge Reform	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby submits its comments on the Emergency Petition for Prescription filed by MCI Telecommunications Corporation ("MCI").

MCI's petition is a plea to the Commission to take immediate remedial action on various facets of its access reform policy. Concerned about the uncertainties created by recent court decisions, MCI maintains that the foundation upon which the Commission built its access reform structure has all but crumbled. MCI asserts that, because competition in the local exchange has not developed, an essential element of the Commission's strategy for controlling access charges has also not developed. Consequently, MCI urges the Commission to modify two key aspects of access reform, namely the timing surrounding the move to cost-based access rates and the administration of the presubscribed interexchange carrier charge ("PICC").

MCI's request for immediate prescription of cost-based access charges is similar to the joint petition filed by Consumer Federation of America, International Communications Association and National Retail Federation on December 9, 1997,[1] on

[1] See, *In the Matter of Petition for Rulemaking of Consumer Federation of America*, RM No. 9210.

which Sprint has already commented. Sprint respectfully refers the Commission to its January 30, 1998 comments in that docket.[2]

The remainder of MCI's petition delineates the problems resulting from the creation and implementation of the PICC. Sprint shares the concern expressed by MCI that the introduction of the PICC has posed numerous and complex issues for both the IXCs and the LECs. While clearly more economically sound than minute of use-based access charges, the flat-rate PICC charge assessed on IXCs has proven to be both difficult for the LECs to define and to bill, and for the IXCs to verify. Many LECs (not including the Sprint LECs) have been unable to render bills for PICCs on a timely basis. Some LECs have informed Sprint that they are months away from accurately billing certain types of PICC, and one LEC will not be able to furnish PICC data in the standard billing format until well into the fourth quarter. As a result, IXCs are at a loss to know what their PICC costs are, and can only recover those costs on a "best guess" basis.

The most effective way to deal with the problems outlined is to move away from artificial distinctions created by the PICC and instead lift the cap on the subscriber line charge ("SLC") so that all common line costs assigned to the interstate jurisdiction are recovered directly from the cost causer. Certainly there can be no debate that the end user is the cost causer for the loop. The loop provides the end user's connection to the network – regardless of whether that connection is via a primary or non-primary line. Moreover, recovering the interstate allocated loop costs, together with the non-traffic sensitive switching costs, through an increased SLC will have the same economic effect to the end-user as the pass-through of the PICC. It has become clear that the PICC will

[2] For the Commission's convenience, a copy of those comments is attached.

be passed through to the end user as a separate line item on the IXC bill and rightfully so, since to do otherwise, would cause the end user to lose the economic benefit derived by paying non-traffic sensitive costs on a flat-rated rather than a minute-of-use basis. Rather than sustain two flat-rate end user charges, Sprint contends that it would be more understandable to the customer, and more easily administered by the industry, if the ILEC billed the PICC directly to the customer through the SLC. This would allow the ILEC to perform the billing function, based on information it already maintains (which would ease administrative burdens on both the LECs and the IXCs) while, at the same time, easing customer confusion over multiple charges. Sprint believes this solution to be far superior to the temporary fixes suggested by MCI and urges the Commission to accept Sprint's recommendation.

Should the Commission decline to adopt Sprint's proposal to combine the PICC with the end-user SLC, then Sprint agrees with MCI that the Commission must take certain corrective actions to relieve the burdens placed on the industry as a whole by the creation of the PICC. First, Sprint agrees with MCI that that the Commission should eliminate the distinction between primary and non-primary lines. In its comments filed last September in the Commission's rulemaking aimed at defining primary lines,[3] Sprint suggested that:

> ...the Commission [to] consider further the wisdom and benefits of differentiating between primary and non-primary residential lines for purposes of assessing access charges under the revised structure. ...Sprint believes that it would be far better for the Commission to dispense with its attempt to differentiate between primary and non-primary lines altogether. Sprint does not suggest that the Commission should load the additional revenue requirements that would have been recovered from non-primary residential lines (through higher PICCs or

[3] *In the Matter of Defining Primary Lines*, CC Docket 97-181. The Commission has not yet resolved this docket.

> SLCs) back onto usage-based access charges, or onto the multi-line business PICC. Rather, the Commission should set the residential SLC and PICC at levels that represent the weighted average of the primary and non-primary line charges that the Commission contemplated in its Access Reform docket.[4]

Sprint continues to believe that nothing is gained by creating these artificial distinctions and urges the Commission to grant MCI's petition in this regard.

Next, Sprint urges the Commission to heed MCI's call for swift action on Sprint's December 31, 1997 request for a declaratory ruling that an IXC that has terminated service to a presubscribed customer for nonpayment or for violation of any other term or condition of the IXC's tariff is not liable for PICCs with respect to such customer's lines if the IXC has made a timely notification to the LEC that is has discontinued service to the customer. The comment cycle regarding Sprint's petition has been completed with no one leveling any serious challenge to the notion that the Commission's order clearly contemplated the existence of a carrier-customer relationship before an IXC is billed the PICC relating to an end-user's line. Granting Sprint's petition will, therefore, not only carry out the Commission's intent, but will minimize billing disputes between the IXCs and the ILECs, as well as giving the ILECs the information they need to recover the PICC directly from the end user on a timely basis. Consequently, the Commission should act immediately to grant Sprint's petition.

To the extent the Commission maintains the primary/non-primary line distinction, MCI suggests that it should prescribe that a line is primary if it is the only line on the IXC end user billing account. MCI prefers this methodology over the use of established ILEC billing account numbers. Adopting MCI's suggestion on this point would require LECs

[4] *Id.* Sprint Comments at p.2.

to input information from IXC account information into their own billing systems, which would increase the burden on LECs and, to some extent, the IXCs (since IXCs would have to supply such account information to the LECs). Thus MCI's proposal would increase the complexity and burden of PICC administration and accordingly should be rejected.

MCI contends that the IXCs are receiving PICC billing statements that are not accompanied by auditable line count data. This data is necessary to allow the IXC to determine, on a customer-specific basis, the number and types of PICCs for which it is being billed. MCI asks the Commission to prohibit the ILECs from billing PICCs until such time as they are able to provide this data. In the meantime, MCI suggests that the ILECs be held responsible for billing the PICCs directly to the end user customer.

The predicament described by MCI underscores the difficulties created by the Commission's insistence on distinguishing between customer classes for purposes of levying the PICC. Sprint's long distance operation has experienced the frustrations MCI describes and continues to battle with certain ILECs in an effort to receive timely and accurate line count information. For their part, the Sprint LECs have made every effort to provide to the IXCs the data they require, however, without a reliable definition available, IXCs' frustration is real and, for the most part, justified.

While requiring the ILECs to bill the PICC would resolve for the IXCs the dilemma outlined by MCI, in reality, it would merely shift the problem to the ILECs. A better solution to this problem is to create a new field in the Customer Account Record Exchange ("CARE"), the industry-standard electronic data interchange used by LECs and IXCs to exchange customer information, that would house the PICC information as to the

type of PICC being charged for each line. In this way, IXCs would no longer need to depend on tardy, erroneous or nonstandard billing information as is the case today. Including the type of PICC in the CARE data would also allow IXCs to know what types of PICCs are being charged to new customers, without having to wait weeks (or months) for the first PICC bill from the LECs that includes the new customer.

MCI next asks the Commission to establish a standard date on which the ILECs take their "snap-shot" to determine customer PICC assignments. Sprint is certain that the Commission recognized the enormity of such an undertaking when it initially devised the PICC, which is why it did not mandate a standardized date in its initial order. The data on which the PICC is based is extracted from the ILEC's end user billing system after the final billing cycle and before the month-end closing process. A number of factors may effect the timing of the extracted data, such as the number of days in a month or when the weekend falls in the billing cycle. Finally, Sprint has local operations in 19 states and does not have the computer processing capabilities to extract the line classification for every line in every state on the same day. The Commission should take no action to make the administration of the PICC any more burdensome than it already is for both ILECs and IXCs. The Commission should, therefore, reject the idea of a standardized date of the PICC "snap-shot".

Finally, MCI proposes that ILECs be required to issue access bills which break out, by access element, the amount of universal service pass-through contained therein. Currently, each LEC includes in its access rate filing the amount of USF support included in its rate development. Consequently, the information MCI is seeking already exists and is publicly available, at least in the aggregate. Requiring the additional detail sought by

MCI would impose additional billing costs on LECs and bill verification costs on IXCs. MCI has not presented a compelling business justification for imposing these additional burdens.

If MCI's underlying concern is that the Commission continues to allow the LECs to recover their interstate USF contribution from the IXCs through access charges, that is a concern that Sprint shares. This is an issue Sprint addressed in its comments in the Commission's USF Report to Congress proceeding. As Sprint noted there, the issue will be addressed in further USF proceedings and USF appeals. There is no need to address it here, except to say, as Sprint did in its March 4th letter to Chairman Kennard, that "if the Commission wishes to use long distance companies to fund programs that are deemed to be in the public interest, [they] need to be able to pass through charges directly to customer in an open and fair manner." Aside from their direct contributions, the IXCs bear an additional $830.2 million, or 96.4 percent, of the USF contributions made by LECs which the Commission permitted the LECs to pass on through access charge increases. This means that directly or indirectly, the long distance industry is absorbing 90 percent of total USF costs.

While the LECs are able to pass through their USF contributions to their carrier customers through access charges, the IXCs' only avenue of cost recovery is through the end user. If the USF contribution is to be nondiscriminatory and explicit as provided for in the Act, then it is imperative that all carriers recover

their USF cost in a like manner - that is, from the end user customer in the form of a universal service surcharge.

In conclusion, for the reasons stated herein, Sprint urges the Commission to deny MCI's request for immediate prescription of cost-based access charges and rather pursue the orderly transition outlined in Sprint's comments in the CFA/ICA/NRF Petition. Further, with respect to the PICCs, Sprint urges the Commission to adopt the most economically rational and administratively efficient means of recovery, i.e., direct recovery of these costs by the ILEC from its end users through subscriber line charges. Clearly, this direct approach would avoid all of the pitfalls that plague the existing PICC system and would moot all of MCI's PICC concerns. If the Commission decides to continue PICCs, it should: (1) adopt MCI's suggestion and simplify PICC application by eliminating the primary/non-primary line distinction; (2) grant MCI's request for action in favor of Sprint's Petition for Declaratory Ruling that an IXC that has terminated service to a customer for non-payment or violation of any other term or condition of the IXC's tariff is not liable for PICCs with respect to such customer's lines if the IXC has made a timely notification to the LEC that it has discontinued service to the customer; (3) reject MCI's proposed use of IXC end-user billing account instead of using established ILEC end user billing account numbers; (4) require the creation of a new industry standard PICC information field in CARE; and (5) reject MCI's request for a standard date for determining customer PICC assignments.

Finally, the Commission should reject MCI's proposal to require ILECs to break out in access bills, the universal service pass-through by access rate element. The amount of universal service contained in access rates is clearly provided and publicly available in

the rate development filed by each ILEC. Sprint shares MCI's underlying concern that IXC's and their customers bear not only their own direct universal service contributions, but also nearly all of the ILEC contributions as well. Sprint requests competitive neutrality in the recovery of universal service costs, that is, that all carriers recover contributions from their end user customers in the form of an explicit universal service surcharge.

Respectfully submitted,

SPRINT CORPORATION

By _____

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March 18, 1998

ATTACHMENT

Before the
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Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking of	)	
Consumer Federation of America,	)	RM No. 9210
International Communications Association	)	
and National Retail Federation	)	
Relating to Access Charge Reform	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby submits its comments on the Petition for Rulemaking filed jointly by Consumer Federation of America, International Communications Association and National Retail Federation (CFA/ICA/NRF).

In their petition, CFA/ICA/NRF argue that the Commission's reliance in Access Charge Reform, 12 FCC Rcd 15982 (1997), primarily on market forces from facilities-based and unbundled network element (UNE) based competition to drive access charges down to forward looking costs has been seriously undercut by the lack of meaningful local competition, and by the Eighth Circuit's decisions invalidating much of the Commission's local competition efforts.[1] Petitioners urge the Commission to open a rulemaking looking towards immediate prescription of access charges based on forward-looking costs. Sprint shares petitioners' concern but does not support the precise relief they seek.

[1] Iowa Utilities Board v. FCC, 120 F.3rd 753 (8th Cir. 1997), Order on Rehearing issued October 14, 1997, certiorari granted, January 26, 1998.

As was clear from Sprint's submissions in the Access Charge Reform docket,[2] Sprint has been skeptical from the outset as to whether local telephone competition could be relied on to force access charges of incumbent LECs to costs within the next several years. Even resale, the simplest form of local competition, but one which brings no pressure to bear on access charges, is dead in the water. It is simply not a profitable stand-alone entry strategy. Sprint, AT&T and MCI have all ceased to market their resale services to new customers. Sprint's skepticism has been substantially reinforced by the decisions of the Eighth Circuit. Those decisions, which were issued after the First Report and Order in Access Charge Reform and thus could not have been fully anticipated by the Commission in its decision, have erected an enormous roadblock against the development of local competition. By gutting the Commission's pricing rules, the Eighth Circuit is leaving it to the states, the federal district courts, and ultimately, the various courts of appeals and the Supreme Court, to determine the proper pricing of local interconnection and UNEs. Although many state commissions have thus far supported the use of TELRIC pricing, their efforts are being challenged on appeal by many ILECs.

The Eighth Circuit's order on rehearing of October 14, 1997 struck a further serious blow against local competition by allowing ILECs to disassemble UNEs that were already combined in the ILEC's network, a move that artificially increases competitive LECs' costs of using UNEs to offer competitive local service to the point that it may become physically impracticable or economically prohibitive to offer local service through combined UNEs.

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[2] See Sprint's January 29, 1997 Comments at 33-38; and Sprint's February 14, 1997 Reply Comments at 19-23.

Although the Supreme Court, earlier this week, granted certiorari, it appears unlikely that the Court will render a decision before 1999. And even if its decision results in overturning the Eighth Circuit, as Sprint hopes and expects, a resurrection of the Commission's pro-competitive local competition policies will not have marketplace effects overnight. RBOCs may raise substantive issues not addressed by the Eighth Circuit, states may have to set interconnection and UNE rates on a new basis, and interconnection agreements may have to be renegotiated. And CLECs must make new business plans in light of the changed landscape. Because of these factors, it will take some time after the Supreme Court acts before its decision is translated into the beginnings of a more competitive local marketplace.

In the meantime, the substantial change in circumstances since the adoption of the Access Charge Reform order requires, both as a matter of logic and possibly of law,[3] that the Commission reexamine whether its reliance on market forces to drive access rates to costs is warranted. To that extent, Sprint fully shares the concerns of CFA/ICA/NRF.

However, Sprint differs with the petitioners as to the action the Commission should take once it reopens the record. Sprint believes that it is both unwise and unsound for the Commission to prescribe access charges based on forward-looking costs on a flash cut basis. Such an approach ignores the reality that much of the access charge dilemma is the result of policies designed to maintain below-cost local service rates. Therefore, such an action – particularly in advance of completion of the Commission's plan to replace

[3] Compare Geller v. FCC, 610 F.2d 973, 979-80 (DC Cir. 1979) (when original rationale for agency rule disappears, agency must reexamine whether the rule remains in the public interest).

implicit universal service subsidies with an explicit fund for high cost areas – raises questions of fairness to incumbent LECs and could lead to unnecessary litigation on possible claims of confiscation. A better approach, and one that Sprint advocated in its prior submissions in CC Docket No. 96-262, is for the Commission to take measured steps to transition ILECs from existing access charges to cost-based access charges over a finite period of time. Giving ILECs reasonable notice of a change in regulatory policy – from the current inflated access charges to charges based on forward looking costs – and a reasonable time to manage their businesses towards that end, coupled with implementation of a new explicit, competitively neutral high-cost fund for universal service, would, in Sprint's view, negate most claims that the Commission is engaging in confiscatory ratemaking.[4]

In a fashion, the Commission has already given such notice in its Access Charge Reform order. Paragraph 267 or the Order (12 FCC Rcd at 16096-97) contemplates that by February 8, 2001, the ILECs must submit cost data that would enable the Commission to prescribe cost-based rates for any access rate elements that are not already subject to full competition. However, simply waiting until that date before taking any further action is not, in Sprint's view, consistent with the public interest. Above-cost access charges are economically inefficient and a substantial burden to long distance carriers and their consumers, and have the effect of substantially dampening demand for this highly elastic service.[5] There are other steps the Commission could take to transition access charges to

[4] If, after interstate access charges have been reduced to costs and an explicit USF high-cost fund has been implemented, LECs face substantial "stranded" interstate-allocated investment, they should have an opportunity to recover those costs from retail end users.
[5] See Sprint's January 29, 1997 Comments in CC Docket No. 96-262, at 5 and Exhibit 2.

a cost-based level between now and 2001 while still avoiding unnecessary litigation over "confiscation" issues. For example, the Commission could transition non-traffic-sensitive costs to subscriber line charges for primary residential and single-line business lines. Such steps would load costs on the cost causer directly, rather than indirectly (as PICCs do). To the extent facilities-based or UNE-based local competition does develop, such cost recovery will subject the ILECs' levels of non-traffic-sensitive costs to competitive pressure through competition for the end-user's local business. As long as ILEC rates for local service, especially to residential customers, are kept artificially low, either local residential competition by facilities-based or UNE-based carriers will never develop, or the new entrants, forced to match the below-cost local rates of the incumbents, will seek to make themselves whole by imposing excessive access charges on unaffiliated IXCs. A new rulemaking (or, if the Commission prefers, a reopening of CC Docket 96-262) would enable the Commission to consider the ideas of Sprint and other parties for a measured transition from current access charges to cost-based charges.

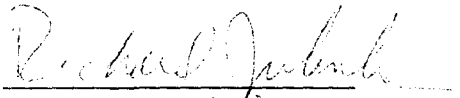
Finally, Sprint wishes to reiterate its firm conviction that any transition to cost-based access charges should only constitute a maximum period to achieve cost-based rates. Since access charges remain such a significant portion of long distance costs, it is imperative that long distance carriers not be required to face interLATA competition from the RBOCs until the access costs the RBOCs impose on unaffiliated IXCs are equal to their own real internal costs of access – i.e., forward-looking costs. Thus, Sprint continues to urge the Commission to view the absence of cost-based access charges as one of the public interest criteria that would warrant disapproval of an RBOC application for in-region long distance authority under §271 of the Act. By the same token, the

Commission should allow RBOCs the flexibility, if they wish to obtain §271 authority before a mandatory transition to cost-based access charges has ended, to voluntarily lower their access charges before that date.

In sum, Sprint believes the recent Eighth Circuit decisions sufficiently dim the prospects for meaningful local competition in the near term so as to warrant a reopening of the Commission's reliance on market forces in its Access Charge Reform decision. Thus, Sprint supports the initiation of a rulemaking proceeding, as requested by CFA/ICA/NRF. And while Sprint supports cost-based access charges, it disagrees with the petitioners that there should be a flash cut to such access charges, but instead suggests that the Commission include in such further rulemaking reasonable transition plans to achieve that end.

Respectfully submitted,

SPRINT CORPORATION



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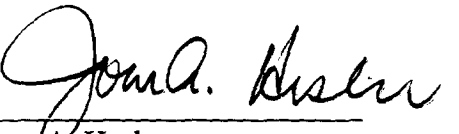
January 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 30th day of January, 1998, to the below-listed parties:



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CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 18th day of March 1998, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of MCI Telecommunications Corporation Petition for Prescription of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, filed this date with the Secretary, Federal Communications Commission, to the persons on the attached service list.

Melinda L. Mills

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